

Withhold agents can avoid penalties by filing timely information returns

Effective January 1, 2003, we are imposing penalties on withholding agents who do not:

- File correct and timely information returns with us.
- Furnish correct and timely information statements to the payee.

If you or organizations you represent haven't filed information returns for 1999 and subsequent years, you should do so now. Your clients can avoid penalties on those prior years by providing the information returns to us no later than January 31, 2003. To avoid penalties for information returns due on or after January 1, 2003, you must file them, correctly, by the due date.

Revenue and Taxation Code Section 18662 requires any person making California source income payments to nonresidents to withhold California income or franchise tax if the payments are for any of the following:

- Services performed by independent contractors.
- Rents.
- Royalties.
- Sales of California real estate.
- Estate income.
- Trust income.
- Partnership income.

How to report withholding information

The withhold agent must report the withholding information to the payee and us. A four-part form is used for this purpose. The form that must be filed with us is an information return. The two forms that must be provided to the payee are information statements.

The forms and due dates for filing information returns and statements regarding withhold at source activity are based on the nature of the transaction. The due dates for filing the information returns are as follows:

Activity	Information Returns Required	Due Date
Independent Contractors, Rents, Royalties, Estate or Trust Distributions, and other misc.	Form 592-B – Nonresident Withholding Tax Statement	31 January of the calendar year.
Partnership Distributions – Domestic Partners	Form 592-B – Nonresident Withholding Tax Statement	31 January of the calendar year.
Partnership Distributions – Foreign Partners	Form 592-B – Nonresident Withholding Tax Statement	The 15th day of the fourth month following the close of the partnership's tax year. If all the partners of the partnership are foreign, the due date is the 15 th day of the sixth month following the close of the partnership's tax year.
Entertainers (If Form 594 is issued by the Franchise Tax Board. Otherwise, see Independent Contractors.)	Form 594 – Notice to Withhold Tax at Source	The 20th day following the end of the month in which the performance occurred.
Real Estate Sales	<p><u>For sales closing prior to Jan. 1, 2003</u></p> <ul style="list-style-type: none">• Form 597 – Nonresident Withholding Tax Statement for Real Estate Sales <p><u>For sales closing on or after Jan. 1, 2003</u></p> <ul style="list-style-type: none">• New Form 597 - Real Estate Withholding Tax Statement	The 20th day following the end of the month in which the transaction occurred.

Amount of penalties

Revenue and Taxation Section 19183 states that *penalties shall be imposed for failure to file correct and timely information returns, and for failure to furnish correct and timely information statements regarding withhold at source*. The amounts of the penalties are determined in accordance with Internal Revenue Code Sections 6721 and 6722. The amounts depend on the due date of the form, when the form is filed, and whether the failure is due to intentional disregard of the requirements.

Here are the various penalty amounts:

Failure to File Correct Information Return (per return)	
Form 592-B (except foreign partners)	Form 592-B (foreign partners), 594, 597
\$15 if a correct form is filed within 30 days of the due date, with a maximum penalty of \$75,000 per year (\$25,000 for a small business)	Same.
\$30 if a correct form is filed by August 1, with a maximum penalty of \$150,000 per year (\$50,000 for a small business)	N/A.
\$50 if a correct form is filed <u>after August 1</u> or a correct form is not filed, with a maximum penalty of \$250,000 per year (\$100,000 for a small business)	\$50 if a correct form is filed <u>more than 30 days after the due date</u> or a correct form is not filed, with a maximum penalty of \$250,000 per year (\$100,000 for a small business)
\$100 or 10% of the total amount of the items that must be reported, if greater, with no maximum if the failure is due to intentional disregard.	Same.

Failure to Furnish Correct Payee Statement (per statement)	
Form 592-B (except foreign partners)	Form 592-B (foreign partners), 594, 597
\$50 for each statement if a correct form is not provided to the payee by the due date, with a maximum penalty of \$100,000 per year.	Same.
\$100 for each statement or 10% of the total amount of the items that must be reported, if greater, with no maximum if the failure is due to intentional disregard.	Same.

Magnetic media filing requirement

Withholding agents with at least 250 Forms FTB 592-B, *Nonresident Withholding Tax Statement*, must use magnetic media to file with us. For more information on how to use magnetic media, get a copy of FTB Pub.1023F, *Nonresident Withholding – Magnetic Media Guidelines*. It is available online at <http://www.ftb.ca.gov/forms/index.html>.

For more information or to request forms, go to our Website at www.ftb.ca.gov. You may also contact us by:

Email: WSCS@ftb.ca.gov.

Fax: (916) 845-9512

Telephone: (888) 792-4900 or (916) 845-4900

Telephone assistance is available from 8 a.m. until 5 p.m. Monday through Friday.

We may modify these hours without notice to meet operational needs.